

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 10, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP642

Cir. Ct. No. 1992CV17

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

RENEE M. FULLER AND RONNIE FULLER,

PLAINTIFFS-APPELLANTS,

v.

**DONALD W. SCHULTZ, M.D., SHAWANO CLINIC, S.C., N/K/A
THEDACARE, CONTINENTAL CASUALTY COMPANY, MEDICAL
PROTECTIVE COMPANY, WHCLIP, WAUSAU LIFE INSURANCE,
PHYSICIANS INSURANCE COMPANY OF WISCONSIN, N/K/A
PROASSURANCE WISCONSIN INSURANCE COMPANY AND WISCONSIN
PATIENT'S COMPENSATION FUND, N/K/A INJURED PATIENTS AND
FAMILIES COMPENSATION FUND,**

DEFENDANTS-RESPONDENTS,

**THE PROFESSIONAL INSURANCE COMPANY, SHAWANO COUNTY
DEPARTMENT OF SOCIAL SERVICES AND LOUIS SULLIVAN,**

DEFENDANTS.

APPEAL from an order of the circuit court for Shawano County:
DOUGLAS T. FOX, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Renee and Ronnie Fuller appeal an order denying their motion to declare void a 1994 order dismissing their medical malpractice action. The malpractice action was dismissed due to Ronnie's failure to comply with discovery. In the present motion and on appeal, the Fullers contend the dismissal order is void because the defendants' attorneys were not authorized to practice law in Wisconsin. The circuit court denied the motion to declare the dismissal order void for four reasons. We affirm the order for the same reasons.

¶2 First, the motion is based on the false premise that the defendants' attorneys were not authorized to represent the defendants in this action. Before the defendants' Wisconsin attorneys withdrew, they moved for the pro hac vice admission of the firm of Bollinger, Ruberry & Garvey of Chicago, Illinois, asserting that some attorneys in that firm are licensed to practice in Wisconsin. The circuit court granted the request. Although attorney Barry Bollinger was suspended in Wisconsin at that time, attorney William Gantz pursued the defendants' motion to dismiss the malpractice action. Other members of the Illinois law firm were licensed to practice in Wisconsin, and Gantz could appear pro hac vice under their auspices. *See* SCR 10.03(4)(b). In addition, regardless of whether the court should have admitted Gantz pro hac vice, the fact remains that it did so and never revoked that order. In fact, the circuit court again admitted Gantz pro hac vice to appear regarding a postjudgment motion in 1997, as did this court in earlier appeals. Because the circuit court granted Gantz pro hac vice status, the present motion alleging the unauthorized practice of law lacks a factual predicate.

¶3 Second, even if the dismissal order was procured by an attorney who was not authorized to practice law in this state, the dismissal order would not be

void for that defect. A judgment or order is void if the court rendering the decision lacked subject matter or personal jurisdiction. *Richards v. First Union Sec., Inc.*, 2006 WI 55, ¶15, 290 Wis. 2d 620, 714 N.W.2d 913. The Fullers claim no jurisdictional defect. The Wisconsin Supreme Court has repeatedly held that the unauthorized practice of law would not establish grounds for voiding a judgment. *Littleton v. Langlois*, 37 Wis. 2d 360, 364, 155 N.W.2d 150 (1967); *Drugsvold v. Small Claims Court*, 13 Wis. 2d 228, 233, 108 N.W.2d 648 (1961). The Fullers characterized these decisions as obiter dicta. This court is not free to disregard statements from Wisconsin Supreme Court opinions as dicta. *Zarder v. Humana Ins. Co.*, 2010 WI 35, ¶58, 324 Wis. 2d 325, 782 N.W.2d 682.

¶4 Third, the allegation that the defendants' attorneys were not authorized to practice law in this state was previously adjudicated. In the Fullers' 1995 appeal from the dismissal order, this court questioned Gantz's authorization to appear pro hac vice. We accepted Gantz's brief after he amended the brief cover to include the name of another member of his firm who was authorized to practice in Wisconsin. The Fullers then filed a motion to strike all of the documents filed by Gantz and to reverse the dismissal order based on their assertion that Gantz was not authorized to practice law in this state. This court denied the motion and subsequently affirmed the dismissal order. In their petition for review, the Fullers argued the court should declare the dismissal order null and void, and attempted to distinguish *Drugsvold* and *Littleton*. The supreme court denied review.

¶5 In 1996, the Fullers filed a motion for relief from the dismissal order. They initially contended the dismissal was procured by fraud on the court under WIS. STAT. § 806.01(1)(c) (1995-96), but the motion was heard under WIS. STAT. § 806.07(1)(h) (1995-96), again based on the assertion that the defendants

were represented by unauthorized attorneys. The circuit court denied the motion and this court affirmed that decision. The Fullers' petition for review was denied by the Wisconsin Supreme Court.

¶6 Therefore, the Fullers' attempts to challenge the validity of the dismissal order based on the allegation of improper appearance by the Illinois attorneys has been repeatedly litigated. It cannot be the subject of further motions. The circuit court's and this court's decisions are conclusive as to all matters that were litigated or could have been litigated in the earlier motions and appeals. *Northern States Power Co. v. Bugher*, 189 Wis. 2d 541, 550, 525 N.W.2d 723 (1995). That procedural bar is designed to draw a line between a meritorious claim and one that is vexatious, repetitious, and needless. *Id.*

¶7 Fourth, the motion was not brought within a reasonable time as required by WIS. STAT. § 806.07(2) (1995-96). This court's February 6, 1995 order called attention to the issue of whether Gantz was properly admitted pro hac vice. The present motion was filed nineteen years later, with no justification for the delay. The Fullers attempt to void the time restriction by not relying on § 806.07(1)(d). However, they cite no alternative authority that would permit the circuit court to void the dismissal order based on nonjurisdictional defects.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2013-14).

